

**THIRD AMENDATORY AGREEMENT**

**THIS THIRD AMENDATORY AGREEMENT** is made and entered into between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City"), and **FELSBURG HOLT & ULLEVIG, INC.**, (the "Design Consultant"), a Colorado corporation, whose address is 6300 South Syracuse Way, Suite 600, Centennial, Colorado 80111.

**RECITALS:**

**A.** The City and the Design Consultant previously entered into an On-Call Traffic and Transportation Engineering Services Agreement dated September 2, 2008, an Amendatory Agreement dated September 29, 2009, and a Second Amendatory Agreement dated August 24, 2010 for on-call design services (collectively, the "Agreement");

**B.** Section 4.01 of the Agreement allows the City at its sole option to extend the initial term for up to four (4) consecutive one (1) year renewal terms; and

**C.** The City has exercised its options for the first and second of the one (1) year renewal terms; and

**D.** The City desires to exercise its option to extend the Agreement for an additional one-year renewal term and the parties desire to amend the Agreement to extend the term.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and obligations herein set forth, the parties agree as follows:

**1.** Section 4.01 of the Agreement, entitled "**Term**" is hereby amended to read in its entirety as follows:

**"4.01 Term.** The initial term of this Agreement shall be one year from the date of execution of this Agreement; provided, however, that any work in progress that was initiated during the term of this Agreement shall continue and be paid for hereunder until the completion thereof. All terms and conditions of the Agreement shall remain in full force and effect until such completion. This initial term may be extended upon the same terms and conditions as set forth herein, at the sole option of the city, for up to **four (4)** consecutive one (1) year renewal terms, upon written notice from the Manager issued prior to expiration of the then current term. A copy of the Manager's written notice to extend shall be maintained in the files of the Manager and the City Attorney. In no event, however, shall the Design Consultant's performance under this Agreement, including the **four (4)** possible extensions, exceed a **five (5)** year period ending on month and day of the execution of this Agreement. In addition, nothing contained herein shall obligate the City to extend the Agreement beyond the initial term.

The City hereby exercises its sole option to extend the term for a third one (1) year renewal term, ending on August 24, 2012.”

2. That Section 5.19 entitled “**NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT**” is hereby amended to read as follows:

**“5.19 NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:**

- (a) This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).
- (b) The Design Consultant certifies that:
  - (1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
  - (2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
- (c) The Design Consultant also agrees and represents that:
  - (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
  - (2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Design Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
  - (3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.
  - (4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Design Consultant to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
  - (5) If it obtains actual knowledge that a subconsultant or

subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Design Consultant will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

- (6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. 20-90.3.

(d) The Design Consultant is liable for any violations as provided in the Certification Ordinance. If Design Consultant violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Design Consultant shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Design Consultant from submitting bids or proposals for future contracts with the City.”

3. Paragraph 5.24, entitled “**ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS,**” is hereby added to the Contract to read as follows:

**“5.24 ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Design Consultant consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.”

4. Except as amended herein, the Agreement is affirmed and ratified in each and every particular.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

**Contract Control Number:** OC81184

**Vendor Name:** FELSBURG HOLT & ULLEVIG

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

DAVID W. BROADWELL, Attorney  
for the City and County of Denver

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals at Denver, Colorado as of the day first above written.

**Contract Control Number:** OC81184

**Vendor Name:** FELSBURG HOLT & ULLEVIG

By: Christopher J. Fasching

Name: Christopher J. Fasching  
(please print)

Title: Principal  
(please print)

**ATTEST: [if required]**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

